UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No.	:	09/802,031	Confirmation No.: 2801
Appellants	:	TOSHIHISA SATAKE	
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TC/A.U.	:	3713	
Examiner	:	Binh An Duc Nguyen	

Docket No.	:	01-202
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Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

APPEAL BRIEF

Dear Sir:

This Appeal Brief is submitted in support of the Notice of Appeal which was filed on September February 16, 2005. A Request for Extension of Time accompanies this Brief to request extension of the period for filing the Appeal Brief to expire on June 16, 2005.

REAL PARTY IN INTEREST

The real party in interest is the Assignee Konami Corporation.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant or Appellant's legal representative which will directly affect or be directly affected by or have a bearing on the Board of Appeals decision in the instant appeal.

STATUS OF CLAIMS

Claims 1-7 are rejected and are on appeal. A true copy of the claims on appeal is attached hereto in Appendix A.

STATUS OF AMENDMENTS

No amendment was filed subsequent to the Examiner's non-final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is drawn to a specified position determining method applied to a game apparatus (Appellant's Specification, page 4, line 13 through page 5, line 6; page 20, line 17 through page 31, line 2; claim 1), a game apparatus (Id. at page 5, line 26 through page 6, line 26; page 10, line 13 through page 20, line 16; claim 6), and a storage medium having computer readable program code means embodied in the medium (Id. at page 7, line 12 through page 8, line 11; page 10, line 13 through page 31, line 2; claim 7).

The specified position determining method is set forth on page 4, lines 5 through page 5, line 6; page 20, line 17 through page 31, line 2, of the instant application. The method determines as to which position on a 3D map is specified by a cursor in a game apparatus that executes a game by displaying a display map image based on the 3D map, including three-dimensional information, and a cursor, including two-dimensional information and indicating a predetermined position of the 3D map, on a display unit (Id.). The method not only allows a game player to specify the cursor position on the 3D map, but the determination result may also be displayed on the display unit to be visually recognized by the game player (Id. at page 5, lines 18-23).

The representative claim for this method is as follows:

Claim 1: A specified position determining method applied to a game apparatus, comprising the steps of:

generating map data to display a map image on a display unit of the game apparatus, the map image two-dimensionally expressing a corresponding three-dimensional map which includes information representing a predetermined three-dimensional field, wherein the three dimensional map is divided into a plurality of small regions and displayed on the display unit;

generating cursor data to display a cursor on the displayed map image;

controlling a position of the displayed cursor in accordance with an instruction from an operator;

virtually disposing the three-dimensional map in parallel to the map image at a backward position thereof seeing from a predetermined viewpoint, such that straight lines extending from the predetermined viewpoint to given points on a peripheral edge of the map image further pass through corresponding points on a peripheral edge of the three-dimensional map;

projecting the predetermined viewpoint onto the three-dimensional map via a position of the cursor displayed on the map image;

detecting a point on the three-dimensional map where the projected viewpoint intersects the predetermined three-dimensional field, whereby determining the detected point as a position where the cursor specifies on the displayed map image; and

advancing the game by specifying with a cursor operated by an operator a position of at least one combat element in at least one of the small regions, wherein the game progresses by moving and specifying the position of the

at least one combat element by means of the cursor operated by the operator.

The game apparatus is implemented as a game apparatus having hardware configured as illustrated in FIG. 1 (Id. at page 5, line 26 through page 6, line 26; page 10, line 13 through page 20, line 16). The game executed by the game apparatus of the present invention is a war simulation game (Id. at page 17, lines 2-5). The war simulation game to be executed by this game apparatus can be described as follows:

A map image of a map, which is divided into rectangular small regions formed in a matrix, is displayed on the display unit and combat elements, which fight with each other, are displayed on some small regions so that the combat is deployed as moving combat elements appropriately in accordance with instructions from the game player. This war simulation game is executed by alternately repeating a normal state and a combat sate wherein the normal state indicates that movement of the combat elements is performed and the combat state indicates that the combat elements fight with each other in the normal state.

(Id. at page 17, lines 6-15)

In one embodiment of the present invention, the game apparatus executes the specified position determining method in accordance with the flow chart of FIG. 5 (page 20, line 17 through page 30, line 19; See FIGS. 5-9).

The representative claim for this game apparatus is as follows:

Claim 6: A game apparatus comprising:

a generator for generating map data to display a map image on a display unit of the game apparatus, the map image two-dimensionally expressing a corresponding three-

dimensional map which includes information representing a predetermined three-dimensional field, wherein the three dimensional map is divided into a plurality of small regions and displayed on the display unit, generating cursor data to display a cursor on the displayed map image, and controlling a position of the displayed cursor in accordance with an instruction from an operator; and

a controller for executing game processing in accordance with a position on the displayed map image specified by the cursor,

wherein the generator virtually disposes the three-dimensional map in parallel to the map image at a backward position thereof seeing from a predetermined viewpoint, such that straight lines extending from the predetermined viewpoint to given points on a peripheral edge of the map image further pass through corresponding points on a peripheral edge of the three-dimensional map, projects the predetermined viewpoint onto the three-dimensional map via a position of the cursor displayed on the map image, and detects a point on the three-dimensional map where the projected viewpoint intersects the predetermined three-dimensional field, whereby determining the detected point as a position where the cursor specifies on the displayed map image; and

advancing the game by specifying with a cursor operated by an operator a position of at least one combat element in at least one of the small regions, wherein the game progresses by moving and specifying the position of the at least one combat element by means of the cursor operated by the operator.

The storage medium having computer readable program code means embodied in the medium contains the cursor position determining method and the game apparatus (Id. at page 7, line 12 through page 8, line 11; page 10, line 13 through page 31, line 2; claim 7). The program code may be recorded on a computer-readable storage medium into a predetermined computer, for example, an exclusive computer game and a home computer (Id., page 7, lines 6-11).

The representative claim for this storage medium computer readable program code means embodied in the medium is as follows:

Claim 7: A storage medium having computer readable program code means embodied in the medium, the computer readable program code means comprising:

computer readable program code means for generating map data to display a map image on a display unit of the game apparatus, the map image two-dimensionally expressing a corresponding three-dimensional map which includes information representing a predetermined three-dimensional field, wherein the three dimensional map is divided into a plurality of small regions and displayed on the display unit;

computer readable program code means for generating cursor data to display a cursor on the displayed map image;

computer readable program code means for controlling a position of the displayed cursor in accordance with an instruction from an operator;

computer readable program code means for virtually disposing the three-dimensional map in parallel to the map image at a backward position thereof seeing from a predetermined viewpoint, such that straight lines extending from the predetermined viewpoint to given points on a peripheral edge of the map image further pass through

corresponding points on a peripheral edge of the three-dimensional map;

computer readable program code means for projecting the predetermined viewpoint onto the three-dimensional map via a position of the cursor displayed on the map image;

computer readable program code means for detecting a point on the three-dimensional map where the projected viewpoint intersects the predetermined three-dimensional field, whereby determining the detected point as a position where the cursor specifies on the displayed map image; and

computer readable program code means for advancing the game by specifying with a cursor operated by an operator a position of at least one combat element in at least one of the small regions, wherein the game progresses by moving and specifying the position of the at least one combat element by means of the cursor operated by the operator.

The method, game apparatus and storage medium having computer readable program code overcomes the disadvantages associated with controlling a cursor in a two-dimensional display map converted from a three-dimensional display map by improving the flexibility of game deployment and making the entire display map image visible to the player. The present disadvantages being the resultant two-dimensional display map exhibits distortion and a non-displayed portion of the original three-dimensional display map can occur, as well as the non-conformance of the positional relationship between the displayed map image and the cursor such that the upper and lower and right and left directions of movement on the displayed map image and the upper and lower and right and left directions of movement of the cursor do not conform, and as a result the game player

cannot instinctively move the cursor in any of these directions on the displayed map image.

GROUNDS OF REJECTIONS TO BE REVIEWED ON APPEAL

There is one pending rejection of claims 1-7, all of which are being appealed, as set forth below.

> (1) Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,952,922 to Griffin et al. in view of U.S. patent No. 5,880,709 to Itai et al.

ARGUMENT

I. U.S. PATENT NO. 4,952,922 IN VIEW OF U.S. PATENT NO.
5,880,709, WHEN FAIRLY READ, FAIL TO TEACH, DISCLOSE,
SUGGEST OR RENDER OBVIOUS THE SUBJECT MATTER OF INDEPENDENT
CLAIMS 1, 6 AND 7 UNDER 35 U.S.C. §103(A)

Appellants assert that claims 1-7 are each individually
patentable and not obvious over U.S.P.N. 4,952,922 and U.S.P.N.
5,880,709, each taken alone or in combination with one another.

The Examiner, in framing his non-final rejection of claims
1-7 under 35 U.S.C. §103(a) over U.S.P.N. 4,952,922 in view of
U.S.P.N. 5,880,709, sets for the following:

"3. Griffin et al. teaches a game method, apparatus,
or storage medium having readable program code means
therein for determining specified object position,
comprising: generating map data (or means thereto) to
display a map image on a display unit (55) of the game
apparatus, the map image two-dimensionally expressing a
corresponding three-dimensional map which includes
information representing a predetermined three-dimensional
field, wherein the three dimensional map is divided into a
plurality of small regions and displayed on the display
unit (55) (Figs. 3b, 4 and 6); virtually disposing the
three-dimensional map in parallel to the map image at a
backward position thereof seeing from a predetermined
viewpoint, such that straight lines extending from the
predetermined viewpoint to given points on a peripheral
edge of the map image further pass through corresponding
points on a peripheral edge of the three-dimensional map;
projecting the predetermined viewpoint onto the three-
dimensional map (Figures 3a, 3b, and 4; 5:33-47, 6:1-17 and
6:38-54); and detecting a point on the three-dimensional
map where the projected viewpoint intersects the

predetermined three-dimensional field (Figure 3a);
virtually disposing the three-dimensional map in parallel
to the map image at a backward position thereof seeing from
a predetermined viewpoint, such that straight lines
extending from the predetermined viewpoint to given points
on a peripheral edge of the map image further pass through
corresponding points on a peripheral edge of the three-
dimensional map (Figure 3a); projecting the predetermined
viewpoint onto the three-dimensional map via a position of
the cursor displayed on the map image; and detecting a
point on the three-dimensional map where the projected
viewpoint intersects the predetermined three-dimensional
field; advancing the game by an operator a position of at
least one combat element (aircraft or tank or helicopter,
10:35-41) in at least one of the small regions, wherein the
game progresses by moving and specifying the position of
the combat element; the predetermined three-dimensional
field includes a plurality of areas, and the detecting step
includes detecting which of the plurality of areas includes
the detected point (Figures 3a and 4); the map data
generating step includes generating map data to display an
area on the map image, which corresponds to the detected
area, on the display to be distinguishable from other areas
(123a-123c)(Figure 3b); the predetermined three-dimensional
field represents a ground surface (Figures 3a and 4; 7:27-
44).

Griffin et al. does not explicitly teach the
limitations of generating cursor data to display a cursor
on the displayed map image; controlling a position of the
displayed cursor in accordance with an instruction from an
operator; and determining the detected point as a position
where the cursor specifies on the displayed map image; and

progressing the game using the cursor. Itai et al.,
however, teaches an image processing method and system for
video game comprising generating cursor data to display a
cursor on the displayed map image (Figures 3 and 6);
controlling a position of the displayed cursor in
accordance with an instruction from an operator; and
determining the detected point as a position where the
cursor specifies on the displayed map image (Figs. 4 and
5); and progressing the game using the cursor to specify
the position of a combat element (zooming in/out enemy 610
in three dimensional space)(Figures 10A-10C; 11:2-12:67).

It would have been obvious to a person of ordinary
skill in the art at the time of the invention was made to
combine Griffin et al.'s system and method for determining
specified object position in three-dimensional space
utilizing ray tracing and inverse ray tracing with the
method of controlling character in three dimensional space
using a cursor, as taught by Itai et al.'s, to rapidly
identify a character displayed on the screen, and further,
easily predict the next movement of the character."
(Office Action dated 11/16/2004, pages 2-4, No. 3)

The Examiner, in response specifically to Appellant's
arguments vis-à-vis the rejection of claims 1-7 under 35 U.S.C.
§103(a) over U.S.P.N. 4,952,922 in view of U.S.P.N. 5,880,709,
set forth the following:

"4. Applicant's arguments filed November 4, 2004 have
been fully considered but they are not persuasive.

In response to applicant's arguments that the
examiner's conclusion of obviousness is based upon improper
hindsight reasoning (applicant's remarks, page 7, lines 11-
25), it must be recognized that any judgment on obviousness

is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Since Griffin et al. teaches a game simulation system and method for virtually generating a three-dimensional map having relative position with a combat character (helicopter, tank, etc.) therein; and Itai et al., further teaches a processing method and system using a cursor to control a combat element (enemy character) in a three dimensional video game space, therefore, in view of a person of ordinary skill in the art, it would have been obvious to combine the teaching of Griffin et al. and Itai et al. to rapidly identify a character displayed on the screen, and further, make it easy to predict the next movement of the character in a three dimensional space of a video game using the cursor."

(Office Action dated 11/16/2004, page 5, No. 4)

It is respectfully submitted that the Examiner's statement as set forth above is a conclusion reached by the Examiner through a hindsight reconstruction using knowledge gleaned only from Appellant's disclosure and does not represent a fair reading of the Itai reference, and ultimately the Griffin reference in view of the Itai reference. The conclusion reached by the Examiner in the above statement belies the concept of obviousness under 35 U.S.C. §103(a) as a whole.

In explaining how the Itai reference corrects the deficiencies of the Griffin reference with respect to several

claim elements including, "controlling a position of the displayed cursor in accordance with an instruction from an operator;" as recited in Appellant's claims 1, 6 and 7, the Examiner indicates as follows:

> "Itai et al., however, teaches an image processing method and system for video game comprising generating cursor data to display a cursor on the displayed map image (Figures 3 and 6); <u>controlling a position of the displayed cursor in accordance with an instruction from an operator</u>; and determining the detected point as a position where the cursor specifies on the displayed map image (Figs. 4 and 5); and progressing the game using the cursor to specify the position of a combat element (zooming in/out enemy 610 in three dimensional space)(Figures 10A-10C; 11:2-12:67)."
> (emphasis added)
>
> (Office Action dated 11/16/2004, page 4, No. 3).

In framing his objection, the Examiner fails to cite a specific passage in the Itai reference to support the aforementioned element of Appellant's claimed invention of claims 1, 6 and 7. Upon closer inspection, Itai reveals that the Examiner's interpretation of Itai's teachings, that is, "<u>controlling a position of the displayed cursor in accordance with an instruction from an operator</u>", as recited in Appellant's independent claims 1, 6 and 7, is inaccurate and the operator in Itai does not control the position of the displayed cursor (See Itai, col. 5, l. 66-col. 6, l. 12; col. 6, ll. 50-61; col. 7, ll. 27-30 and ll. 39-67 through col. 8, 1-14). In fact, the operator in Itai performs the following action, "The player manipulates the gun unit with appropriate timing to attack the enemy." (Itai, col. 8, ll. 40-41), rather than the claim element, "controlling a position of the displayed cursor in

accordance with an instruction from an operator;" as recited in Appellant's claims 1, 6 and 7.

Itai teaches and discloses "the cursor control circuit 26 performs a process for moving the cursor within the display screen and changes the display of the cursor in accordance with the state of the processing performed on the enemy." (col. 7, ll. 39-42). "In order to perform these processing operations, the cursor control circuit 26 reads an enemy timer count D1 from the enemy timer counter 12A, enemy coordinates D3 from the enemy coordinate storage area 12C, a zoom count D2 from the zoom counter 12B, and an enemy attack count D4 from the enemy attack counter 12D to produce and output a cursor control signal to the image processor 13 to thereby move the cursor to a desired position on the display screen, and to change the display of the cursor including a change of the color of the cursor, a slide of the pointers, and enlargement of the cursor." (col. 7, ll. 53-63). This automated function of cursor movement is in fact the object of the invention in Itai.

Itai teaches and discloses the automation of cursor movement in a fast-paced game in order to assist the player in successfully playing the game and enjoying the experience. The background of Itai specifically identifies a disadvantage in game playing stating that "…the content of the game becomes sophisticated and the speed at which the game picture is developed increases" (col. 1, ll. 41-43), and that "…it is difficult to display the character such that it is identified easily and rapidly." And, Itai also discloses the difficulties encountered by a game operator stating that "…the player cannot easily identify a character which is subjected to image processing because the character is displayed in a small size on the display screen or a plurality of characters is displayed

simultaneously." (col. 29-33; See generally, col. 1, lines 11-55).

Itai et al. actually teaches away from and neither discloses nor suggests the claim element, "controlling a position of the displayed cursor in accordance with an instruction from an operator;", as recited in Appellant's independent claims 1, 6 and 7. However, despite these teachings of Itai, the Examiner continues to assert a contrary and inapposite interpretation of Itai (See non-final Office Action dated August 13, 2003, pages 5-7, No. 12; Final Office Action dated January 29, 2004, pages 3-4, No. 4; non-final Office Action dated November 16, 2004, pages 2-4, No. 3). Such an interpretation can only be attributed to using knowledge gleaned only from Appellant's disclosure.

Moreover, Appellant's claims 1, 6 and 7 further recite the element, "advancing the game by specifying with a cursor operated by an operator a position of at least one combat element in at least one of the small regions, wherein the game progresses by moving and specifying the position of the at least one combat element by means of the cursor operated by the operator." In contrast to Appellant's claims 1, 6 and 7, Itai begins describing the "development of the game [of Itai]" at col. 8, ll. 36-45, as the follows:

"The development of the game in this embodiment will be outlined next. First, when an enemy appears on the display screen, the cursor captures the enemy, and the camera control circuit 30 gradually zooms in on both the cursor and the enemy. The player manipulates the gun unit with appropriate timing to attack the enemy. When the attack on the enemy succeeds, the zoom-out operation continues until the next enemy appears, at which time the cursor again

captures the new enemy and the camera control circuit 30

zooms in on the enemy."

The aforementioned "game development" description taken in

conjunction with the "cursor control circuit 26" description

(cited earlier) indicates the game of Itai advances based upon

cursor movement controlled by a predetermined program described

earlier (Itai, col. 4, ll. 44-56) and not the player or operator

of the game. Again, Itai teaches away from and neither suggests

nor discloses the claim element, "advancing the game by

specifying with a cursor operated by an operator a position of

at least one combat element in at least one of the small

regions, wherein the game progresses by moving and specifying

the position of the at least one combat element by means of the

cursor operated by the operator" as recited in Appellant's

independent claims 1, 6 and 7. Again, the Examiner's

interpretation of Itai et al. can only be attributed to using

knowledge gleaned only from Appellant's disclosure.

As stated by the Examiner on page 4, No. 3 of the non-final

office action, "Griffin et al. does not explicitly teach the

limitations of generating cursor data to display a cursor on the

displayed image map; controlling a position of the displayed

cursor in accordance with an instruction from an operator; and

determining the detected point as a position where the cursor

specifies on the displayed map image; and progressing the game

using the cursor." For the reasons outlined in Appellant's

remarks contained herein, Itai et al. does not correct the

deficiencies in the teachings of Griffin et al.

It is clear from the foregoing remarks, when fairly reading

the disclosure of U.S.P.N. 4,952,922 to Griffin et al. in view

of U.S.P.N. 5,880,709 to Itai et al., that the Examiner's

position and conclusion as set forth in his non-final rejection

of claims 1-7 of Appellant's application amounts to nothing more

than a hindsight reconstruction using knowledge gleaned only from Appellant's disclosure.

Thus, Appellant's independent claims 1, 6 and 7 are patentable over U.S.P.N. 4,952,922 to Griffin et al. in view of U.S.P.N. 5,880,709 to Itai et al. Since dependent claims 2-5 ultimately depend from independent claim 1, and independent claim 1 is patentable over U.S.P.N. 4,952,922 to Griffin et al. in view of U.S.P.N. 5,880,709 to Itai et al., dependent claims 2-5 are also patentable over U.S.P.N. 4,952,922 to Griffin et al. in view of U.S.P.N. 5,880,709 to Itai et al.

Accordingly, it is respectfully submitted that the Examiner's rejection of claims 1-7 under 35 U.S.C. §103(a) as being unpatentable over U.S.P.N. 4,952,922 to Griffin et al. in view of U.S.P.N. 5,880,709 to Itai et al. should be reversed by the Honorable Board of Appeals.

II. U.S. PATENT NO. 4,952,922 IN VIEW OF U.S. PATENT NO. 5,880,709, WHEN FAIRLY READ, LACK THE TEACHING, SUGGESTION OR REASONING TO BE COMBINED AND RENDER OBVIOUS THE SUBJECT MATTER OF INDEPENDENT CLAIMS 1, 6 AND 7 UNDER 35 U.S.C. §103(A)

Obviousness is a question of law based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; (3) the differences between the prior art and the claimed invention; and (4) extent of any objective indicia of non-obviousness. Winner International Royalty Corporation v. Ching-Rong Wang, 53 U.S.P.Q.2d 1580, 1586 (CAFC 2000). When an obviousness determination is based on multiple prior art references, there must be a showing of some "teaching, suggestion, or reason" to combine the references. (Id.) Evidence of a suggestion, teaching, or motivation to combine the prior art references may

flow, *inter alia*, from the references themselves, the knowledge of one of ordinary skill in the art, or from the nature of the problem to be solved. (<u>Id.</u>) Although a reference need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability, in whatever form, must nevertheless be "clear and particular". (<u>Id.</u> at 1586-87).

In framing his rejection under 35 U.S.C. §103(a) and explaining his reasoning underlying the combination of U.S.P.N. 4,952,922 in view of U.S.P.N. 5,880,709, the Examiner has stated the following:

> "It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to combine Griffin et al.'s system and method for determining specified object position in three-dimensional space utilizing ray tracing and inverse ray tracing with the method of controlling character in three dimensional space using a cursor, as taught by Itai et al.'s, to rapidly identify a character displayed on the screen, and further, easily predict the next movement of the character."
> (Office Action dated 11/16/2004, page 4, No. 3)

> "Since Griffin et al. teaches a game simulation system and method for virtually generating a three-dimensional map having relative position with a combat character (helicopter, tank, etc.) therein; and Itai et al., further teaches a processing method and system using a cursor to control a combat element (enemy character) in a three dimensional video game space, therefore, in view of a person of ordinary skill in the art, it would have been obvious to combine the teaching of Griffin et al. and Itai et al. to rapidly identify a character displayed on the

screen, and further, make it easy to predict the next

movement of the character in a three dimensional space of a

video game using the cursor."

(Office Action dated 11/16/2004, page 5, No. 4)

Appellants' respectfully disagree with the Examiner's

characterization of the teachings of both Griffin and Itai. The

Griffin reference teaches and describes the following:

> "A method for use with a vehicle simulator which provides
>
> for the rapid update of displayed terrain data in areas of
>
> non-visible terrain surfaces and terrain image
>
> discontinuities. The method is for use with a system which
>
> projects a time-varying computer-generated image scene
>
> representative of the terrain as viewed from a moving
>
> vehicle." (See Abstract)

> "Simulators, such as aircraft flight trainers, and the like
>
> are currently in wide use. The simulators are used to
>
> train vehicle operators, both military and commercial, or
>
> to permit an operator to become accustomed to the terrain
>
> over which he is to maneuver." (col. 1, ll. 10-14)

> "The present invention is described herein with
>
> reference to the use of an aircraft flight simulator which
>
> displays visual image information to the operator.
>
> However, it is to be understood that other types of images,
>
> such as infrared (FLIR) or radar images, or the like, may
>
> also be displayed. In addition, the present invention is
>
> not limited to aircraft simulators, but may also be
>
> employed for land vehicle simulators, or the like." (col.
>
> 3, ll. 42-49)

"The simulator projects a time-varying computer-
generated image scene representative of the terrain as
viewed from the cockpit of the moving aircraft 21. The
aircraft traverses a simulated flight path which is
controlled by the operator by means of various aircraft
controls. These controls (control stick, rudders, etc.)
correspondingly control the image which is projected to the
operator." (col. 4, ll. 11-18).

"A new and improved method for use with a vehicle
simulator which allows for the rapid update of displayed
terrain data including areas of terrain discontinuities has
been described." (col. 10, ll. 35-39).

The Itai reference teaches the following:

"An image processor is composed of a game device body, an
operation panel and a display. The game device body is composed
of a data processor 11 and a memory 12. The data processor 11
realizes a hit determining circuit 111, an enemy control circuit
112, an enemy (object) set circuit 113, a cursor control circuit
114, an enemy retrieval circuit 115 and a camera control circuit
116 in accordance with corresponding programs used. When an
object is displayed on the display, the cursor control circuit
114 displays a cursor in accordance with predetermined
processing performed on the basis of data on the coordinates of
the object. The camera control circuit 116 performs a zoom-in
display process for the object when the object is displayed on
the display." (Abstract)

"The cursor process (step 204) is performed by the cursor
control circuit 26. FIG. 6 shows the details of the cursor
process, which includes fetching the zoom count D2, enemy
coordinates D3, and enemy attack count D4, and the enemy status

signal S10 from the enemy control circuit 22 and performs the
cursor moving process on the basis of those signals (step 2041).
In the cursor moving process, the cursor control circuit 26
reads data on enemy coordinates D3 displayed on the display
screen to thereby cause the cursor to be displayed so as to
indicate the character, i.e., so as to move the cursor towards
the character and surround the character, as shown in FIGS. 10A-
10C in the present embodiment, which will be described in
greater detail later." (col. 9, ll. 53-65)

As noted in making a determination of obviousness, evidence
of a suggestion, teaching or motivation to combine references
may flow from the references themselves. However, neither
Griffin nor Itai contain such a suggestion, teaching or
motivation. The content of the Griffin reference does not teach
or suggest using its method for the rapid update of displayed
terrain data in areas of non-visible terrain surfaces and
terrain image discontinuities beyond aircraft or land vehicle
simulator use and contains no explicit or implicit motivation to
do so. Moreover, the vehicle simulator taught by Griffin does
not even employ a cursor, rather the vehicle simulator operator
utilizes "…controls (control stick, rudder, etc.) [to]
correspondingly control the image which is projected to the
operator." (col. 4, ll. 16-18)   The content of the Itai
reference does not teach one skilled in the art to allow an
operator to control a cursor's movement as recited in
Appellant's independent claims 1, 6 and 7. To infer Itai does
allow an operator to control a cursor's movement contradicts
Itai's teachings and description as a whole. Thus, neither
Griffin nor Itai contain any evidence of a suggestion, teaching
or motivation that would lead one of ordinary skill in the art

to combine the two references and render Appellants' independent claims 1, 6 and 7 obvious.

As noted in making a determination of obviousness, the evidence of a suggestion, teaching or motivation to combine the prior art references may flow from the knowledge of one of ordinary skill in the art. In the instant application, one of ordinary skill in the art upon reading Griffin or Itai would not recognize how to combine the references to reach the claimed invention of Appellant's claims 1, 6 and 7. As discussed above, Griffin does not utilize the movement of a cursor to control the movement of aircraft, or contemplated land vehicle, in its simulator. And, Itai teaches away from the claimed invention of Appellant's claims 1, 6 and 7.

Lastly, as noted in making a determination of obviousness, the evidence of a suggestion, teaching or motivation to combine the prior art references may flow from the nature of the problem to be solved. As described above, neither Griffin nor Itai address the nature of the problem(s) to which the claimed invention of Appellant's independent claims 1, 6 and 7 pertain. For example, one disadvantage addressed by Appellant's independent claims 1, 6 and 7 concerns the non-conformance of the positional relationship between the displayed map image and the cursor such that the upper and lower and right and left directions of movement on the displayed map image and the upper and lower and right and left directions of movement of the cursor do not conform and, as a result, the game player cannot instinctively move the cursor in any of these directions on the displayed map image. Appellant's independent claims 1, 6, and 7 address this disadvantage and others disclosed therein (Appellant's specification, page 4, line 5-page 9, line 12; page 10, line 11-page 30, line 19). In contrast, the method taught by Griffin does not even involve the use of a cursor, while the

method taught by Itai teaches away from allowing the operator to control the movement of a cursor.

As noted earlier, when an obviousness determination is based on multiple prior art references, there must be a showing of some "teaching, suggestion, or reason" to combine the references. Winner International Royalty Corporation, at 1586. Upon reviewing the references, the knowledge of one of ordinary skill in the art, and the nature of the problem to be solved, none of these provide the requisite evidence in order to combine Griffin with Itai as the Examiner contends.

Accordingly, it is respectfully submitted that the Examiner's rejection of claims 1-7 under 35 U.S.C. §103(a) as being unpatentable over U.S.P.N. 4,952,922 to Griffin et al. in view of U.S.P.N. 5,880,709 to Itai et al. should be reversed by the Honorable Board of Appeals.

CONCLUSION

For the reasons set forth above, the honorable Board of Appeals is hereby requested to reverse the Examiner's rejection of claims 1-7 based on all of the cited references discussed above.

CLAIMS APPENDIX

Attached hereto is a Claims Appendix A containing all claims in the application and which form the basis for this appeal.
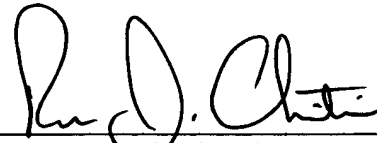
APPEAL BRIEF FEE

Enclosed is a check in the amount of $1950.00 to cover the Appeal Brief fee, Oral Hearing fee, and extension of time fee.

If any additional fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,
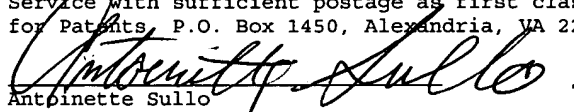
TOSHIHISA SATAKE

By

Ross J. Christie
Attorney for Appellant
Reg. No. 47,492

IN TRIPLICATE

Date: June 7, 2005

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on June 7, 2005.

Antoinette Sullo

Appendix A

Claim 1: A specified position determining method applied to a game apparatus, comprising the steps of:

generating map data to display a map image on a display unit of the game apparatus, the map image two-dimensionally expressing a corresponding three-dimensional map which includes information representing a predetermined three-dimensional field, wherein the three dimensional map is divided into a plurality of small regions and displayed on the display unit;

generating cursor data to display a cursor on the displayed map image;

controlling a position of the displayed cursor in accordance with an instruction from an operator;

virtually disposing the three-dimensional map in parallel to the map image at a backward position thereof seeing from a predetermined viewpoint, such that straight lines extending from the predetermined viewpoint to given points on a peripheral edge of the map image further pass through corresponding points on a peripheral edge of the three-dimensional map;

projecting the predetermined viewpoint onto the three-dimensional map via a position of the cursor displayed on the map image;

detecting a point on the three-dimensional map where the projected viewpoint intersects the predetermined three-dimensional field, whereby determining the detected point as a position where the cursor specifies on the displayed map image; and

advancing the game by specifying with a cursor operated by an operator a position of at least one combat element in at least one of the small regions, wherein the game progresses by moving

and specifying the position of the at least one combat element
by means of the cursor operated by the operator.

Claim 2: The specified position detecting method according to
claim 1, wherein the map data generating step includes a substep
of generating map data to display a position on the map image,
which corresponds to the determined position, on the display to
be distinguishable from other positions.

Claim 3: The specified position detecting method according to
claim 1, wherein the predetermined three-dimensional field
includes a plurality of areas, and the detecting step includes a
substep of detecting which of the plurality of areas includes
the detected point.

Claim 4: The specified position detecting method according to
claim 3, wherein the map data generating step includes a substep
of generating map data to display an area on the map image,
which corresponds to the detected area, on the display to be
distinguishable from other areas.

Claim 5: The specified position detecting method according to
claim 1, wherein the predetermined three-dimensional field
represents at least one of a ground surface and a water surface.

Claim 6: A game apparatus comprising:
    a generator for generating map data to display a map image on
a display unit of the game apparatus, the map image two-
dimensionally expressing a corresponding three-dimensional map
which includes information representing a predetermined three-
dimensional field, wherein the three dimensional map is divided
into a plurality of small regions and displayed on the display

unit, generating cursor data to display a cursor on the displayed map image, and controlling a position of the displayed cursor in accordance with an instruction from an operator; and

a controller for executing game processing in accordance with a position on the displayed map image specified by the cursor,

wherein the generator virtually disposes the three-dimensional map in parallel to the map image at a backward position thereof seeing from a predetermined viewpoint, such that straight lines extending from the predetermined viewpoint to given points on a peripheral edge of the map image further pass through corresponding points on a peripheral edge of the three-dimensional map, projects the predetermined viewpoint onto the three-dimensional map via a position of the cursor displayed on the map image, and detects a point on the three-dimensional map where the projected viewpoint intersects the predetermined three-dimensional field, whereby determining the detected point as a position where the cursor specifies on the displayed map image; and

advancing the game by specifying with a cursor operated by an operator a position of at least one combat element in at least one of the small regions, wherein the game progresses by moving and specifying the position of the at least one combat element by means of the cursor operated by the operator.

Claim 7: A storage medium having computer readable program code means embodied in the medium, the computer readable program code means comprising:

computer readable program code means for generating map data to display a map image on a display unit of the game apparatus, the map image two-dimensionally expressing a corresponding three-dimensional map which includes information representing a predetermined three-dimensional field, wherein the three

dimensional map is divided into a plurality of small regions and displayed on the display unit;

computer readable program code means for generating cursor data to display a cursor on the displayed map image;

computer readable program code means for controlling a position of the displayed cursor in accordance with an instruction from an operator;

computer readable program code means for virtually disposing the three-dimensional map in parallel to the map image at a backward position thereof seeing from a predetermined viewpoint, such that straight lines extending from the predetermined viewpoint to given points on a peripheral edge of the map image further pass through corresponding points on a peripheral edge of the three-dimensional map;

computer readable program code means for projecting the predetermined viewpoint onto the three-dimensional map via a position of the cursor displayed on the map image;

computer readable program code means for detecting a point on the three-dimensional map where the projected viewpoint intersects the predetermined three-dimensional field, whereby determining the detected point as a position where the cursor specifies on the displayed map image; and

computer readable program code means for advancing the game by specifying with a cursor operated by an operator a position of at least one combat element in at least one of the small regions, wherein the game progresses by moving and specifying the position of the at least one combat element by means of the cursor operated by the operator.